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No. 485

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D., 1940.

H. S. GRAY, ET AL., PETITIONERS,

V.

MYRTA BLIGHT, ADMINISTRATRIX OF THE
ESTATE OF H. E. BLIGHT, DECEASED,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE TENTH CIRCUIT AND
SUPPORTING BRIEF.

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**PETITION FOR WRIT OF CERTIORARI TO THE
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FOR THE TENTH CIRCUIT AND
SUPPORTING BRIEF.**

To the Honorable Charles Evans Hughes, Chief Justice
of the United States and the Honorable Associate
Justices of the Supreme Court of the United States:

Now come H. S. Gray and Margaret Gray, individually, and H. S. Gray as next friend for John Herbert Gray and Peggy Gray, minors, and present herewith their Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit, to review its decision in the above entitled and numbered cause, and submit herewith the necessary printed copies of the Transcript of the record filed in the Circuit Court of

(Italics in Application are the writer's.)

Appeals and properly certified copy of the proceedings in that Court and attach hereto a Supporting Brief.

As grounds for the issuance of said most gracious Writ, your Petitioners respectfully show:

I.

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED.

This entire cause may be cogently summarized by the question:

“Does the mere *failure* of the legislature of a State of this Union to affirmatively abrogate the old and antiquated doctrine ‘*actio personalis moritur cum persona*’ amount to such a declaration of public policy as to *forbid* the bringing of an action for personal injuries in such State against the estate or personal representative of a deceased tort feisor—even though such cause of action survives under the law of the State within whose jurisdiction the tort was committed?”

Pleadings of Petitioners.

The Petitioners instituted this Cause as Plaintiffs against Respondent as Defendant, in the District Court of the United States for the District of Colorado, seeking to recover:

- (a) Damages for personal injuries;
- (b) Damages to the automobile of the Petitioner, H. S. Gray.

In their Complaint, Petitioners alleged that such damages resulted from a collision on August 22, 1938, between the automobile of Petitioner H. S. Gray and an automobile owned, driven and operated by H. E. Blight; *that the collision occurred near the town of Winnemucca, in Nevada*, as the direct and proximate result of the negligence of the said H. E. Blight in the management, op-

eration and control of his automobile (R. 5-6); that Petitioners were each and all residents and citizens of the State of Texas (R. 4), and at the time of the collision H. E. Blight was a resident and citizen of the State of Colorado (R. 4-5).

Petitioners further alleged that subsequently—on or about October 6, 1938, H. E. Blight died, and that, thereafter, on November 2, 1938, Myrta Blight, also a citizen and resident of the State of Colorado, was duly appointed and qualified as Administratrix of the Estate of H. E. Blight, deceased, and was acting in such capacity at the time of the filing of such suit (R. 5), but that all of said damages claimed accrued, though were not fully ascertainable, prior to the death of H. E. Blight on October 6, 1938.

They further alleged that such causes of action each survived the death of H. E. Blight under the law of the State of Nevada, and specifically plead the pertinent provisions of the Nevada law (R. 9-10).

The damages sought were in the aggregate sum of \$21,750.00, of which \$1,050.00 was for damages to Petitioner H. S. Gray's automobile; the remainder for personal injuries inflicted upon the Petitioners, as follows:

- (a) \$3,700.00 to H. S. Gray, individually (which includes an item of \$700.00 for doctors' and nurses' bills incurred in the treatment of himself and other members of his family);
- (b) \$3,500.00 to Margaret Gray;
- (c) \$3,500.00 to John Herbert Gray, a minor;
- (d) \$10,000.00 to Peggy Gray, a minor.

In none of the above itemized damages sought was there any element of exemplary damages; they all being in the nature of pecuniary damages sought for actual injuries sustained.

Pleadings of Respondent.

Respondent filed only a Motion to Dismiss the action on the ground that the Complainant failed to state a claim against her upon which relief could be sought in Colorado (R. 12).

Action of the Trial Court.

The Honorable Trial Court sustained such Motion by Respondent and dismissed Petitioners' Cause of Action in its entirety (R. 12 and 21), and Petitioners having refused to amend or plead further (R. 20-21) duly perfected their appeal to the Circuit Court of Appeals for the Tenth Circuit (R. 21-22).

Decision of the Appellate Court.

The Circuit Court of Appeals *affirmed* the action of the Trial Court in dismissing Petitioners' Cause *in so far as the same sought a recovery for personal injuries against the Estate of the said H. E. Blight* (R. 31), (and modified the Judgment of the Trial Court in so far as the Petitioner H. S. Gray's action was concerned; and remanded this part of the Judgment with instructions to overrule the Motion of Respondent as to the claim of H. S. Gray for damages to the said car)—stating as grounds therefor:

(1) That the State of Colorado does not permit the representative of a deceased tortfeasor to be sued upon a claim for damages for personal injuries (inflicted by the deceased tortfeasor during his lifetime)—even though such claim for damages survived under the law of the place of wrong, i. e.: under the Law of Nevada (R. 27);

(2) That to permit the prosecution of an action for personal injuries against the representative of a deceased tortfeasor is repugnant to the public policy of the State of Colorado, even though such cause of action arose and survived under the law of a sister State (R. 30).

The Opinion of the Honorable Circuit Court of Appeals may be found in 112 F. (2d) 696.

Relevant Statutes and Constitutional Provisions of the States of Nevada and Colorado involved in this cause.

(a) Nevada:

“Sec. 1. Causes of action, whether suit has been brought upon the same or not, in favor of the injured party for personal injuries other than those resulting in death, whether such injuries be to the health or to the reputation or to the person of the injured party, shall not be abated by reason of his death nor by reason of the death of the person against whom such cause of action shall have accrued; but in case of the death of either or both, such cause of action shall survive to and in favor of the heirs and legal representatives of such injured party and against the person, receiver, or corporation liable for such injuries, and his or its legal representatives; and so surviving such cause of action may be hereafter prosecuted in like manner and with like legal effect as would a cause of action for injuries to or destruction of personal property. The court or jury in every such action may give such damages, pecuniary and exemplary, as it shall deem fair and just.”

(Nevada's Compiled Laws, 1929, 1938 Pocket Part for Volume 1, Sections 240-241—Cause of Action for Injuries Not to Abate by Reason of Death.)

(b) Colorado:

1. “That courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property or character; and that right and justice should be administered without sale, denial or delay.”

(Constitution, Art. 2, Sec. 6, Compiled Laws of Colorado of 1921, pp. 34 to 83.)

2. "The judicial power of the State as to all matters of law and equity, except as in the Constitution otherwise provided, shall be vested in the Supreme Court, District Courts, County Courts and such other courts as may be provided by law; in counties and cities and counties having a population exceeding one hundred thousand, exclusive original jurisdiction in cases involving minors and persons whose offenses concern minors may be vested in a separate court now or hereafter established by law."

(Constitution, Art. 6, Sec. 1, Compiled Laws of Colo. 1921, pp. 34 to 83.)

3. "The District Courts shall have jurisdiction of all cases both at law or in equity, and such appellate jurisdiction as may be conferred by law. They shall have original jurisdiction to determine all controversies upon relation of any person on behalf of the people, concerning the rights, duties and liability of railway, telegraph or toll road companies, or corporations."

(Constitution, Art. 6, Sec. 11, Compiled Laws of Colorado, 1921, pp. 34 to 83.)

4. "All actions in law, whatever, save and except actions on the case for slander or libel, or trespass for injuries done to the person, and actions brought for the recovery of real estate, shall survive to and against executors, administrators and conservators.

(Colo. Stats. Ann. Sec. 247, Chapt. 176, 1935).

5. "An action shall not abate by the death or other disability of a party, or by the transfer of any interest herein, *if the cause of action survive or continue*. In case of the death or other disability of a party, the Court on motion may allow the action be continued by, or against, his representative or successor in interest."

(Sec. 15, Code of Civil Procedure, Ch. 1, Compiled Laws Colo., 1921.)

II.

SPECIFICATION OF JURISDICTIONAL BASIS TO THE HONORABLE SUPREME COURT OF THE UNITED STATES.

This Petition for Writ of Certiorari is made under the authority of Title 28, Section 347a, U. S. C. A. (Judicial Code 240); and that portion of Rule 38, Paragraph 5 of the Rules of the Supreme Court of the United States providing jurisdiction:

“(b) Where a circuit court of appeals has—decided an important question of local law in a way probably in conflict with applicable local decisions; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way probably in conflict with applicable decisions of this court - -”;

The date of Judgment to be reviewed is June 10, 1940; but the Circuit Court of Appeals considered Petitioners' Motion for Rehearing, filed on the 5th day of July, 1940 (R. 33-41), and overruled the same on the 12th day of July, 1940 (R. 43), and this Petition for Writ of Certiorari is made to this Honorable Court within ninety (90) days from and after the overruling of said Motion for Rehearing.

III.

QUESTIONS PRESENTED.

(a) Whether or not a cause of action for personal injuries is “property” within the meaning of the “due process” ⁽¹⁾ and “equal protection” ⁽²⁾ clauses of the Federal Constitution; and an adjunct of a public act of the State of Nevada ⁽³⁾ entitled to “full faith and credit” in the State of Colorado. ⁽⁴⁾

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1. Art. XIV, Amendments to the U. S. Const., Appendix A, page 29.
 2. Art. XIV, Amendments to the U. S. Const., Appendix A, page 29.
 3. Sec. 240-241, Nevada's Compiled Laws, 1929, *supra*, pg. 5, par. (a).
 4. Art. IV, Sec. 1, U. S. Const., Appendix A, page 29.

(b) Whether or not a cause of action for personal injuries survives to and against personal representatives of the deceased party, as a matter of right, as distinguished from the question of procedure;

(c) Whether or not the State of Colorado, by express *constitutional* mandate ⁽¹⁾ creates and ordains courts of general jurisdiction, wherein is guaranteed a speedy remedy for every injury to *person*, property or character - - so long as such cause of action survives under the law of the *lex loci*; ⁽²⁾

(d) Whether or not the State of Colorado *permits* the prosecution of a cause of action for personal injuries against the personal representative of a deceased tortfeasor, where such cause of action arose and survived under the law of a sister state;

(e) Whether or not the enforcement of a cause of action for personal injuries against the estate of a deceased tortfeasor, which arose and survived under the laws of a sister State, is repugnant to the public policy of the State of Colorado.

(f) Whether or not Section 247, Chapter 176, 1935 Colorado Statutes Annotated, ⁽¹⁾ declares the public policy of Colorado to permit the prosecution of certain causes of action against the executor, administrator or conservator of the wrongdoer after his death, but excludes therefrom causes of action for injuries to the person.

IV.

REASONS FOR GRANTING THIS PETITION FOR WRIT OF CERTIORARI.

(a) the decision of the Circuit Court of Appeals herein, affirming the action of the Trial Court in dismissing Petitioners' Causes of Action for personal in-

1. Art. 2, Sec. 6, Const. of Colo., *supra*, pg. 5, par. (b) 1.

2. Sec. 240-241, Nevada's Compiled Laws, 1929, *supra*, pg. 5, par. (a).

juries against the personal representative of the deceased tortfeasor, H. E. Blight, because the same are not permitted by and are offensive to, the public policy of the State of Colorado, even though such causes of action survived under the Law of Nevada, is on an *important* question of local law and is probably in conflict with the applicable local decisions of the State of Colorado; and in this connection Petitioners respectfully state that although the question of whether or not a cause of action for personal injuries would survive the death of the tortfeasor (where such tort was committed in the State of Colorado) has been often before the Courts of Colorado, the same have specifically held only that *the cause of action itself* does not survive under the Law of Colorado, and in no instance have the Courts of such State in any manner indicated that the maintenance of such a cause of action, which in fact survived the death of such tortfeasor under the law of a sister State wherein it was committed, is prohibited by, or in any manner offensive to, the public policy of the State of Colorado.

(b) The decision of the Circuit Court of Appeals herein, as to whether or not a cause of action for personal injuries, which survived under the law of the *lex loci*, may be maintained against the estate or personal representative of a deceased tortfeasor in a jurisdiction other than that of the *lex loci*, wherein no express Constitutional provision, statute or judicial decision provides that such cause of action shall survive, involves an important question of Federal law which has not been but should be settled by this Court; and particularly so, where the cause of action sought to be enforced is one acquired under and as an adjunct to the *public act* of a sister State.

(c) The decision of the Circuit Court of Appeals in holding that a cause of action for personal injuries may not be maintained against the personal representative of a deceased tortfeasor in the State of Colorado, even though such cause of action expressly survived under the law of a sister State (Nevada) is a decision

of a Federal question probably in conflict with the following decisions of this Court;

- (1) *Dennick v. Central Ry. Co.*, 103 U. S. 11.
26 L. Ed. 439.
- (2) *N. P. R. R. Co. v. Babcock*, 154 U. S. 190, 38
L. Ed. 958.
- (3) *Bradford Electric Light Co. v. Clapper*, 286
U. S. 145; 52 Sup. Ct. 571.
- (4) *Ormsby v. Chase*, 290 U. S. 387, 54 Sup. Ct. 211.

WHEREFORE, Petitioners pray that a Writ of Certiorari be granted, directed to the Circuit Court of Appeals for the Tenth Circuit, and in conformity with law, to the end that this cause may be reviewed and determined by this Court and that the Judgment of the Circuit Court of Appeals be reversed in so far as the same affirms the action of the Trial Court in dismissing Petitioners' causes of action for personal injuries against Myrta Blight, administratrix of the estate of H. E. Blight, and that the same be affirmed in so far as it reverses and remands Petitioner, H. S. Gray's cause of action for damages to his automobile, and for such relief as these Petitioners may be entitled to in the premises.

Respectfully submitted,

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